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Brief to standing committee
on justice BILL 59

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BRIEF TO STANDING COMMITTEE

ON JUSTICE

BILL 59 AN ACT TO REFORM THE LAW
RESPECTING PROPERTY RIGHTS AND
SUPPORT OBLIGATIONS BETWEEN MARRIED
PERSONS AND IN OTHER FAMILY RELATIONSHIPS.

BY: ONTARIO STATUS OF
WOMEN COUNCIL

JANUARY 1978



MR. CHAIRMAN, HON. ATTORNEY GENERAL, MEMBERS OF THE COMMITTEE, WE WANT TO THANK YOU FOR HEARING OUR BRIEF ON BILL 59.

IF YOU SHARE WITH ME A FEELING OF DÉJÀ VU - IT IS BECAUSE WE HAVE BEEN HERE BEFORE.

SINCE ITS FORMATION IN 1973, FAMILY LAW REFORM HAS BEEN ONE OF THE PRIMARY GOALS OF THE ONTARIO ADVISORY COUNCIL ON THE STATUS OF WOMEN. FROM THE SPONSORSHIP OF THE FAIR SHARE CONFERENCE IN 1974 THROUGH SUCCESSIVE BILLS WE HAVE MADE OUR VIEWS KNOWN TO THE ONTARIO GOVERNMENT ON "MATTERS PERTAINING TO WOMEN" AS IS OUR MANDATE.

WE REGRET THAT WHEN WE COME BEFORE YOU TO DISCUSS ECONOMIC RIGHTS FOR WOMEN, WE ARE FORCED TO DISCUSS THESE RIGHTS IN THE CONTEXT OF MARRIAGE BREAKDOWN. IDEALLY, WOMEN SHOULD HAVE ECONOMIC EQUALITY DURING THE TERMS OF THEIR MARRIAGES - BUT WE REALIZE THAT THIS IS BEYOND THE SCOPE OF BILL 59 AS IT IS PRESENTLY WRITTEN.

WE SEE BILL 59 AS ONLY A FIRST STEP IN THE EVOLUTION OF THE LAW OF THE FAMILY IN ONTARIO - A STEP AWAY FROM THE ARCHAIC AND HORRENDOUS LAWS WITH WHICH WE HAVE BEEN SADDLED FOR SO LONG.

AND WE APPLAUD THE GOVERNMENT'S GOOD FAITH - AND TOO THE GOOD FAITH OF THE OPPOSITION PARTIES - IN CONTINUING THE DELIBERATIONS OF THIS COMMITTEE WHILE THIS HOUSE IS NOT IN SESSION. WE LOOK FORWARD TO PASSAGE OF AN AMENDED AND IMPROVED BILL IN THE NEXT LEGISLATURE. WOMEN ARE WATCHING!

MR. CHAIRMAN, THE ATTORNEY GENERAL HAS SAID THAT THE NEW LEGISLATIVE MEASURES "ABOLISH THE LAST REMNANTS OF THE MARRIED WOMEN'S INFERIOR STATUS AND GUARANTEE TO BOTH SPOUSES A FAIR SHARE OF MATRIMONIAL PROPERTY IF THEIR MARRIAGE BREAKS DOWN."

AS MUCH AS WE WOULD LIKE TO BELIEVE THAT THIS IS GOING TO HAPPEN, LET'S RECOGNIZE THAT UNLESS SIGNIFICANT CHANGES ARE MADE, THE GOVERNMENT WILL BE PROCLAIMING AN ADMITTEDLY "COMPROMISE" BILL - ONE WHICH IMPROVES WOMEN'S ECONOMIC RIGHTS UPON MARRIAGE BREAKDOWN BY RECOGNIZING THE CONTRIBUTION IN KIND OF THE SPOUSE, BUT ONE THAT DOES NOT NECESSARILY GUARANTEE WOMEN A "FAIR SHARE".

IT THEREFORE FOLLOWS, THAT IF THEY CANNOT BE GUARANTEED A FAIR SHARE, THEIR INFERIOR STATUS CANNOT BE ABOLISHED. OBVIOUSLY, THE GOVERNMENT'S VIEW OF FAIR SHARING DIFFERS FROM THAT OF THE STATUS OF WOMEN COUNCIL.

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WE BELIEVE WHEN HUSBAND AND WIFE WORK SIDE BY SIDE IN MARRIAGE - AS WHEN WOMEN AND MEN WORK SIDE BY SIDE IN THE LABOUR FORCE - THEIR CONTRIBUTIONS ARE OF EQUAL VALUE. THE PRESENT BILL, HOWEVER, IS BASED ON THE ASSUMPTION THAT ONE SPOUSE OR ANOTHER HAS NOT CONTRIBUTED EQUALLY TO THE MANAGEMENT OF THE RELATIONSHIP'S ASSETS.

THE DEFINITION OF FAMILY ASSETS IN BILL 59 MUST BE BROADENED TO AT LEAST INCLUDE PENSIONS, STOCKS, BONDS, AND BANK ACCOUNTS. AS PRESENTLY DEFINED IT DOES NOT INCLUDE THE "NEST EGG." IT SHOULD.

IN THE WORDS OF ONE OF THE MANY WOMEN WHO HAVE EXPRESSED THEIR VIEWS TO THE COUNCIL ON THE NARROW DEFINITION OF FAMILY ASSETS:

"WIVES SHARE THE RESPONSIBILITY OF THE DECISION TO SAVE AND MAKE A CONTRIBUTION BY SACRIFICING THE EXTRAVAGANCES TODAY FOR THE MUTUAL BENEFIT OF THE COUPLE AT SOME LATER DATE. THIS ANTICIPATES THAT THE BENEFITS WILL BE SHARED.

A WOMAN WHO HAS SCRIMPED AND SAVED TO BUILD A "NEST EGG" FOR YEARS SHOULD BE ASSURED THAT ONE DAY, IF IT CRACKS, IT WILL BE RIGHT DOWN THE MIDDLE."

WE COULDN'T AGREE MORE.

THE GOVERNMENT IS NOT CONSISTENT IN ITS POLICY TOWARD RECOGNITION OF THE ECONOMIC CONTRIBUTION OF WOMEN WHO WORK IN THE HOME. RECENTLY, ONTARIO SUPPORTED AN AMENDMENT TO THE CANADA PENSION PLAN WHICH ALLOWS SPOUSES TO DIVIDE THEIR CANADA PENSION PLAN CREDITS EQUALLY UPON MARRIAGE BREAKDOWN. IN THIS FORUM, INCOME IS BEING IMPUTED FOR THE WORK DONE IN THE HOME. HERE, ONTARIO HAS RECOGNIZED THAT WOMEN WORKING IN THE HOME CONTRIBUTE AS MUCH AS THEIR SPOUSES WHO WORK OUTSIDE THE HOME.

THERE IS NO DOUBT THAT THE NEED FOR PENSION SECURITY FOR WOMEN IS GROWING. THE CANADIAN COUNCIL ON SOCIAL DEVELOPMENT IN THEIR BOOK WOMEN IN NEED STATE:

"THE POSITION OF OLDER WOMEN IS PARTICULARLY GRIM. ALMOST THREE QUARTERS OF WOMEN 65 AND OVER LIVED ON INCOMES UNDER \$5,000."

IF THE ONTARIO GOVERNMENT CAN SUPPORT THE SPLITTING OF THE CANADA PENSION PLAN ON DIVORCE, THEN WHY WILL IT NOT SUPPORT THE SPLITTING OF PUBLIC AND PRIVATE PENSION PLANS, AS A PROPERTY RIGHT? ON THIS POINT, WE APPLAUD THE ADDITION OF PENSION PLANS FOR THE SATISFACTION OF SUPPORT OBLIGATIONS IN BILL 59.

ON THE MATTER OF ECONOMIC SECURITY DURING MARRIAGE, THE ONTARIO STATUS OF WOMEN COUNCIL REITERATES ITS BELIEF THAT THERE SHOULD BE CO-OWNERSHIP OF THE MATRIMONIAL HOME

DURING MARRIAGE. ECONOMICS ARE IMPORTANT NOT ONLY AT THE TIME OF MARRIAGE BREAKDOWN. BILL 59 GIVES WOMEN A COMPLEX AND UNWIELDY SYSTEM OF POSSESSORY RIGHTS. BUT WE DO NOT FEEL THAT IT GIVES REAL RIGHTS.

AND, MR. CHAIRMAN, WE DO NOT ACCEPT THE ARGUMENT THAT YOU HAVE PROPOSED THIS SYSTEM OF PROPERTY RIGHTS DURING MARRIAGE BECAUSE THE FEDERAL GOVERNMENT'S INCOME TAX LAWS WOULD NEGATE CO-OWNERSHIP RIGHTS. WE BELIEVE THAT IF YOU HAD INTRODUCED A CONCEPT OF CO-OWNERSHIP WHEN THE PROTOTYPE FOR THIS BILL WAS INTRODUCED WE WOULD BE WELL ON THE WAY TO HAVING THE NEEDED ACCOMMODATION FROM THE FEDERAL GOVERNMENT BY THIS TIME.

AND, MR. CHAIRMAN, WE ALSO DO NOT ACCEPT THE ARGUMENT THAT THE PROPOSED BILL IS FLEXIBLE ENOUGH TO VARY THE DIVISION OF ASSETS IF IT IS NOT EQUITABLE TO DIVIDE THEM EQUALLY, BECAUSE WE FEEL THAT IT IS INAPPROPRIATE TO ASK A JUDGE TO DECIDE WHETHER ONE SPOUSE'S CONTRIBUTION TO A MARRIAGE WAS GREATER THAN THE OTHER'S. RATHER, AS WE HAVE STATED BEFORE, WE BELIEVE THAT THE "HAVE" SPOUSE SHOULD HAVE TO PROVE WHY HE SHOULD NOT SHARE HIS ASSETS - THE NEST EGG - WITH THE "HAVE NOT" SPOUSE.

ON A MORE POSITIVE NOTE, I WANT TO CONGRATULATE THE ATTORNEY GENERAL FOR MODIFYING THE CONDUCT CLAUSE TO READ "GROSS AND OBVIOUS." HOWEVER, MR. CHAIRMAN, I AM SURE YOU REALIZE THAT WE DO NOT BELIEVE CONDUCT SHOULD BE TIED TO SUPPORT AT ALL, AND WE WILL CONTINUE TO PRESS TO HAVE IT REMOVED. I WOULD ASK THAT HE SHOW THE SAME FLEXIBILITY BY EXPANDING THE DEFINITION OF FAMILY ASSETS TO AT LEAST INCLUDE PENSIONS, STOCKS, BONDS, AND BANK ACCOUNTS.

IN CLOSING, MAY I SAY THAT THE LAW HAS BEEN TOO STATIC FOR TOO LONG. WE HOPE THAT THE PASSAGE OF A MODIFIED BILL 59 WILL NOT BE A SINGLE EVENT IN THE REFORM OF THE LAW OF THE FAMILY, BUT RATHER, WILL BE PART OF AN ONGOING PROCESS OF MODERNIZATION. AS THE PUBLIC AND THE PRACTITIONERS BECOME MORE FAMILIAR WITH THE NEW LAWS, AND AS THE RESIDUAL OPPOSITION TO CO-OWNERSHIP AND GREATER COMMUNITY OF PROPERTY FADES AWAY WE LOOK FORWARD TO FURTHER REVISIONS TO THE MAJOR PRINCIPLES BEHIND BILL 59.

IN SHORT, WE SUPPORT THE BILL. WE DON'T THINK IT GOES FAR ENOUGH. WE HAVE TOLD YOU THE WAYS WE WOULD HAVE CHANGED IT. WE ASK YOU TO CHANGE IT. IF IT IS NOT CHANGED THIS TIME, WE WILL CONTINUE TO FIGHT UNTIL IT IS CHANGED.



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